

update

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Friday Facts: "ROT" explained

In a normal credit purchase transaction, property in goods supplied passes on the delivery of the goods to the purchaser by the seller not as most would commonly believe when payment of the goods has been made.

The difficulty with that is if the purchaser becomes insolvent, the purchaser ultimately gets the benefit of the goods for which they have not paid and the seller is out of pocket for the value of the goods. The seller then becomes an unsecured creditor of the purchaser and lines up after all secured creditors to collect payment.

One way that the law has developed to assist in protecting the seller is by the creation and inclusion of a reservation of title clause, or what is otherwise known as a ROT clause.

A reservation of title clause is essentially a clause which forms part of a contract to purchase where the purchaser expressly agrees that they are purchasing the goods subject to a reservation of the title to the goods in favour of the seller, until the goods are paid for in full.

The advantage of an effective ROT clause is that it will allow a seller to retrieve their unpaid goods from a purchaser in an insolvency event situation.

An ROT clause will not however be effective against the purchaser if:

- it has not been properly drafted
- it is not brought to the express attention of the purchaser – it is not enough to simply

insert a clause on an invoice or in an agreement without reference to the purchaser

- it has not been properly incorporated as a term into the contract of sale
- the goods can not be identified by reference to a particular invoice which remains unpaid as opposed to previous invoices which have been paid

There is no doubt that a properly drafted retention of title clause can be effective to assist in the preservation of title to goods in favour of a seller against a buyer, so that the old saying that "possession is 9/10 of the law" is prevented. The most important thing is to make sure you get the ROT clause right!

For more information

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